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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

SHIELD AVIATION, INC.,

Plaintiff and Respondent,

v.

DONALD CLYDE CORUM,

Defendant and Appellant.

D074109

(Super. Ct. No. 37-2017-00011698-  
CU-CO-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, John S. Meyer, Judge. Affirmed.

C. Bradford Law Firm and Caycie D. Bradford-McBee for Defendant and Appellant.

Solomon Ward Seidenwurm & Smith, Mei-Ying M. Imanaka, Deborah A. Yates and William V. Whelan for Plaintiff and Respondent.

After a bench trial, the court found Donald Clyde Corum in breach of contract for failing to deliver title to a truck he agreed to sell to Shield Aviation, Inc. (Shield). It also found Corum committed fraud and misrepresentation for failing to disclose to Shield that

Corum did not hold clear title to the truck, and it found Corum liable for conversion. On appeal, Corum contends the court erred by not applying Vehicle Code section 24007, subdivision (b), which he claims shows the contract was illegal. However, Corum has not met his burden to provide an adequate record to overcome the presumption of correctness on appeal, and we therefore affirm the judgment.

### FACTUAL AND PROCEDURAL BACKGROUND

Corum elected to proceed on appeal without a reporter's transcript of the trial proceedings, on a record limited to the trial court's statement of decision and judgment. We take the facts from the parties' stipulation, as detailed in the statement of decision.

Corum was an employee and then independent contractor of Shield from 2011 through 2015. In 2014, Shield wanted to purchase a truck to transport company property, and Corum agreed to sell Shield a truck he owned. Shield and Corum entered into a contract for sale of the truck in January 2014. The parties stipulated that the contract was valid and enforceable. Shield paid Corum the full contract price of \$25,000. Corum delivered possession of the truck to Shield but failed to convey title because Corum stated he had to retrieve the title from a safety deposit box in Arizona. Corum said he would deliver the title to Shield when he returned from Arizona, but he never delivered it.

Unbeknownst to Shield, Corum did not hold clear title to the truck because he had used the truck as collateral for a loan that was outstanding as of the truck's sale date. When title was not delivered by July 2015, Shield offered to rescind the contract and return the truck to Corum in exchange for the \$25,000 it had paid. Corum refused. In December 2016, Corum took the truck from Shield's premises without permission.

Corum eventually returned the truck to Shield pursuant to a court order on October 16, 2017, but Corum never conveyed title of the truck. Shield filed the instant action seeking damages and declaratory relief. The trial court returned a verdict in favor of Shield and awarded Shield possession and title of the truck, \$9,132.32 in compensatory damages, \$10,000 in punitive damages, and attorney fees.

Corum timely appealed. He designated a clerk's transcript on appeal, but he did not include the exhibits from trial or a copy of the contract he contends is illegal. He also chose to proceed without a record of the oral proceedings at trial.

## DISCUSSION

Corum contends the trial court erred by failing to apply Vehicle Code section 24007, subdivision (b), which he argues renders the contract for sale of the truck illegal because the truck could not pass a California smog test and so it could not be sold. Shield argues that Corum forfeited his contention on appeal by failing to provide an adequate record. Corum did not respond to this argument; he neither filed a reply brief nor sought to augment the record. (Cal. Rules of Court,<sup>1</sup> rule 8.155.) We agree with Shield; because Corum has provided an inadequate record on appeal, he fails to show error, and the judgment must be affirmed.

We review issues of law de novo. (*Harustak v. Wilkins* (2000) 84 Cal.App.4th 208, 212.) It is a "cardinal rule of appellate review that a judgment or order of the trial court is presumed correct and prejudicial error must be affirmatively shown." (*Foust v.*

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<sup>1</sup> All further rule references are to the California Rules of Court.

*San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187 (*Foust*).) "[T]he appellant has the burden of demonstrating prejudicial error." (*Hotels Nevada, LLC v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 348.) If the appellant cannot show error in the record, the presumption of correctness dictates that the judgment must be upheld. (*Foust*, at p. 187.)

To carry this burden, the appellant must "present[] legal authority on each point made and factual analysis, supported by appropriate citations to the material facts in the record." (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655.) "It is the appellant's responsibility to support claims of error with citation and authority." (*Id.* at p. 656.) Thus, when an appellant fails to provide an adequate record, "the judgment must be conclusively presumed correct as to all evidentiary matters." (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992, italics omitted.)

Corum elected to proceed with a clerk's transcript, which automatically includes the notice of appeal and the judgment being appealed. (Rule 8.122.) An appellant seeking to include additional documents must identify them in the notice of designation. (Rule 8.122(a)(1) & (b)(3).) Corum designated only one additional document, a statement of decision. He did not designate a copy of the contract, which would be necessary for us to evaluate its legality. Accordingly, Corum's arguments are not supported by facts and, thus, fail to overcome the presumption of correctness. (*Foust*, *supra*, 198 Cal.App.4th at p. 187.)

Additionally, Corum is bound by the stipulated facts. (*Leonard v. City of Los Angeles* (1973) 31 Cal.App.3d 473, 477 [finding stipulated facts agreed to by both parties

are binding on the parties and the court unless illegal or contrary to public policy].)

Because the parties stipulated that the contract was valid and enforceable, we cannot draw factual conclusions to the contrary. (*Mooney v. Pickett* (1972) 26 Cal.App.3d 431, 437 [holding facts stipulated to at the lower court were binding on an appellate court].)

#### DISPOSITON

The judgment is affirmed. Shield shall recover its costs on appeal.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

HALLER, J.